

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

NBC UNIVERSAL, INC.
Employer

and

Case 02-CA-115732

LOCAL 11, NATIONAL ASSOCIATION OF
BROADCAST EMPLOYEES & TECHNICIANS-
COMMUNICATION WORKERS OF AMERICA, AFL-CIO
Petitioner

NATIONAL ASSOCIATION OF BROADCAST
EMPLOYEES & TECHNICIANS-COMMUNICATION
WORKERS OF AMERICA, AFL-CIO
Petitioner

LOCAL 31, NATIONAL ASSOCIATION OF
BROADCAST EMPLOYEES & TECHNICIANS-
COMMUNICATION WORKERS OF AMERICA,
AFL-CIO
Petitioner

AMERICAN FEDERATION OF TELEVISION
AND RADIO ARTIST
Petitioner

LOCAL 41, NATIONAL ASSOCIATION OF
BROADCAST EMPLOYEES & TECHNICIANS-
COMMUNICATION WORKERS OF AMERICA,
AFL-CIO
Petitioner

LOCAL 53, NATIONAL ASSOCIATION OF
BROADCAST EMPLOYEES & TECHNICIANS-
COMMUNICATION WORKERS OF AMERICA,
AFL-CIO
Petitioner

ORDER

On October 11, 2011, the Acting Regional Director issued a Decision on Unit Clarification Petitions¹ finding that the newly created content producers are part of a single

¹ Cases 02-UC-000619, 02-UC-000625, 05-UC-000403, 05-UC-000407, 13-UC-000417, and 31-UC-000323.

nationwide bargaining unit, and clarifying the unit to include the content producers at the Employer's New York, Chicago, and Los Angeles local news stations.² On September 25, 2013, the Board denied the Employer's Request for Review. On April 7, 2014, the Board granted the General Counsel's motion for summary judgment and found that the Employer violated Section 8(a)(5) and (1) of the Act by failing and refusing to bargain with the Union as the exclusive representative of the content producers and to provide the Union with requested information. *NBC Universal, Inc.*, 360 NLRB No. 69 (2014). The Employer refused to comply with the Board's Order and filed a petition for review with the United States Court of Appeals for the District of Columbia Circuit, and the Board filed a cross-application for enforcement.

On February 23, 2016, the Court denied the Employer's petition for review and the Board's cross-application for enforcement and remanded this proceeding to the Board. *NBC Universal Media, LLC v. NLRB*, 815 F.3d 821 (D.C. Cir. 2016). The Court instructed the Board to clarify its application of its precedents in determining whether the parties' Master Agreement covered a single nationwide bargaining unit, as found by the Board, or multiple units, as urged by the Employer. More specifically, the Court instructed the Board to address: (1) whether the "wholistic" approach followed in cases involving "master agreements" such as *Columbia Broadcasting Systems*, 208 NLRB 825 (1974) (*CBS*), *National Broadcasting Co.*, 114 NLRB 1 (1955), and *American Broadcasting Co.*, 114 NLRB 7 (1955), is appropriate to address the single versus multiple unit issue instead of the "two-step bifurcated" approach set forth by the Acting Regional Director (815 F.3d. at 830-832); (2) its view of the effect of the certification decision proffered by the Union (*National Broadcasting Co.*, 59 NLRB 478 (1944)), the apparently indeterminate state of the record with respect to the parties' history of bargaining agreements, including those negotiated pursuant to voluntary recognition, and whether the applicability of *CBS* to the instant matter is undercut by the fact that *CBS* involved a collective-bargaining relationship between the union and the employer based on voluntary recognition rather than certification (815 F.3d at 829-830); (3) how *National Broadcasting Co.*, 114 NLRB 1 (1955), may be distinguishable from the instant case (815 F.3d at 833); and (4) the parties' dispute over the Local 11 Agreement (815 F.3d at 834). The Board's approach in *CBS* was of particular interest to the Court with respect to the unit scope issue, and the Court asked the Board to address the factors set forth in that case and their relevance to the instant case (815 F.3d 832-833). See *CBS*, supra at 826.

On May 24, 2016, the Board advised the parties that it had accepted the Court's remand and invited the parties to file statements of position. Thereafter, the Employer, the General Counsel and the Union submitted statements of position, the Employer filed a reply brief and limited response to the General Counsel's statement of position,³ and the General Counsel and the Union each filed a supplemental statement in response.

² The Acting Regional Director, finding that the NBC-National Association of Broadcast Employees and Technicians ("NABET") Master Agreement governs a single nationwide unit, treated the petitions separately filed by the various NABET local unions as subsumed within the NABET-CWA national petition, and thus granted the unit clarification in Case 2-UC-000625 only.

³ Per the Employer's request, its answering brief was limited to responding to the General Counsel's argument that the Board should accrete content producers into the "A" Unit of the Master Agreement.

Having considered the Court's opinion and the statements of position, we find that the issues raised by the Court can best be resolved by remanding this proceeding to the Regional Director for further analysis in light of the Court's opinion, including reopening the record, if necessary. In remanding the case, we find that the "wholistic" approach followed in cases involving master agreements such as *CBS*, 208 NLRB 825, *National Broadcasting Co.*, 114 NLRB 1, and *American Broadcasting Co.*, 114 NLRB 7 is appropriate to address the single versus multiple unit issue instead of the "two-step bifurcated" approach set forth by the Acting Regional Director. In this regard, we find, as suggested by the Court, that the statement of the law relied on by the Acting Regional Director as set forth in *Louisiana Dock Co.*, 293 NLRB 233 (1989)⁴ does not reflect an overview of Board precedent, and the "wholistic" approach generally followed by the Board in similar cases suggests that the statement is permissive and not restrictive.

Accordingly, this case is remanded to the Regional Director for further appropriate action consistent with this Order, including reopening the record, if necessary, and the issuance of a Supplemental Decision.

MARK GASTON PEARCE, MEMBER

LAUREN McFERRAN, MEMBER

Acting Chairman Miscimarra, concurring:

I join my colleagues, for the reasons they state, in finding both that remand to the Regional Director is appropriate and that on remand, the Regional Director should apply the "wholistic" approach embodied in *CBS*, 208 NLRB 825 (1974) and other cases to resolve the issue of whether a single, nationwide unit exists. I write separately because I believe that the parties should have the opportunity to develop a factual record informed by the factors generally set forth in this wholistic approach and specifically set forth in *CBS*, supra. Therefore, I believe the record must be reopened on remand so that either party may have the opportunity to develop an evidentiary record that takes into account these factors. This is especially necessary, in my view, given that the Acting Regional Director in his October 2011 decision specifically noted that the record contained "limited" evidence on key issues relevant to the wholistic approach such as bargaining history. Accordingly, I concur in the decision to remand the case to the Regional Director, but I believe the record must be reopened to allow further relevant evidence to be introduced.

PHILIP A. MISCIMARRA, ACTING CHAIRMAN

Dated, Washington, DC., March 7, 2017.

⁴ In *Louisiana Dock Co.*, the Board found that "[a]bsent certification, the existence of a multisite unit is based on the agreement of the parties. When there is no clear and unambiguous contract provision setting forth the parties' agreement, it may be evidenced by bargaining history or a pattern of bargaining." *Id.* at 234, citing *Sambo's Restaurants*, 212 NLRB 788 (1974).